

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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| USDC SDNY<br>DOCUMENT<br>ELECTRONICALLY FILED<br>DOC #:<br>DATE FILED: 04/22/2025 |
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UNITED STATES OF AMERICA,

-v-

CRISTIAN MARINO-CASTRO,

Defendant.  
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20-cr-157 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

On August 19, 2024, Defendant Cristian Marino-Castro moved, pursuant to 18 U.S.C. § 3582(c)(2), for the Court to correct what he alleges to be an error in the calculation of his sentencing guidelines range. Dkt. No. 118. Among other arguments made by Mr. Marino-Castro, he asserted that the Court's sentence on Count 1 ignored the fact that the Hobbs Act carries a statutory 20-year maximum sentence. Dkt. No. 118 at 15.

Mr. Marino-Castro identified an error in connection with the Court's imposition of sentence that was inadvertent and that was not detected by the Probation Office, the Government, or defense counsel. Mr. Marino-Castro pleaded guilty pursuant to a plea agreement to a superseding information that charged him in Count 1 with Hobbs Act conspiracy, in violation of 18 U.S.C. § 1951, and in Count 2 with possession of marijuana with the intent to distribute it, in violation of 21 U.S.C. §§ 841(a)(1), and 841(b)(1)(D). Dkt. No. 80. The Court sentenced Mr. Marino-Castro to a term of imprisonment of 252 months on Count 1, to be served concurrently with a term of imprisonment of sixty months on Count 2 for a total of 252 months' imprisonment. Dkt. No. 94; Dkt. No. 101 at 35. The sentence conformed to the structure recommended by the Probation Office, although it was significantly lower—the Presentence Report recommended a sentence in excess of 240 months on Count 1. Dkt. No. 88 at 22. No

party identified any legal error with the sentence at the time of sentencing. Dkt. No. 101 at 37–38.

As Mr. Marino-Castro points out, however, the sentence was illegal. Although the aggregate sentence imposed by the Court fell within the statutory maximums permitted by Counts One and Two when combined, the 252 month sentence was in excess of that permitted by Count One in isolation. The statutory maximum sentence for Hobbs Act Robbery is 240 months. *See* 18 U.S.C. § 1951. The Court did not have authority to impose a sentence of 252 months’ imprisonment on Count One.

By memorandum and order of March 20, 2025, the Court identified the issue for the Government and asked for a response. Dkt. No. 121. In its response, the Government agrees that the sentence imposed on Count One of the Indictment exceeds the statutory maximum. Dkt. No. 123. The Government states that the defendant should be resentenced to correct this error. *Id.* The Government declines to invoke the provision of the plea agreement in which the Defendant waived his right to appeal or collaterally attack a sentence within or below the stipulated guidelines range. *Id.* However, the Government notes that defendant currently has an appeal pending before the Second Circuit and states that this Court therefore lacks jurisdiction to resentence the defendant. *Id.* The Government proposes that the Court (1) appoint counsel for the defendant for purposes of sentencing; (2) set a sentencing date approximately 30 days after the mandate is issued; and (3) order that the Probation Office prepare a supplemental PSR. *Id.*

The Court will appoint counsel to represent Mr. Marino-Castro with regard to the issues discussed in this order.

The Government is directed to provide a copy of this Order to the United States Court of Appeals for the Second Circuit and to inform the Second Circuit of the Court's error.

SO ORDERED.

Dated: April 22, 2025  
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', is written over a horizontal line.

LEWIS J. LIMAN  
United States District Judge